

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>KATHLEEN POPE, et al.</b>	:	Case No. 1:19-cv-00817-DRC
	:	
<b>Plaintiffs,</b>	:	(Douglas R. Cole, Judge)
	:	
<b>v.</b>	:	
	:	
<b>THE KROGER CO.,</b>	:	
	:	
<b>Defendant.</b>	:	

**PLAINTIFF’S MOTION FOR APPROVAL OF NOTICE OF VOLUNTARY DISMISSAL**

This action was commenced by the filing of Plaintiff’s Class Action Complaint on September 25, 2019 (Doc. 1). Defendant filed a motion to dismiss the complaint on December 16, 2019 (Doc. 11). Upon being fully briefed, the Court heard argument on June 16, 2020, and entered an Order on June 19, 2020 (Doc. 20), granting Defendant’s motion and also *sua sponte* granting to Plaintiff leave to file a First Amended Class Action Complaint. Plaintiff filed her First Amended Class Action Complaint on July 16, 2020 (Doc. 22). Defendant’s response, by agreement, is not due until August 27, 2020 (Doc. 24). Plaintiff has determined that it is appropriate to voluntarily dismiss the First Amended Class Action Complaint, without prejudice. No answer or motion for summary judgment has been filed. No class has been certified and a settlement class has not been proposed.

Federal Rule of Civil Procedure 41(a)(1)(A)(i), states that a plaintiff may, subject to Rule 23(e), dismiss an action without court order by filing a notice of dismissal where the opposing party has not answered or filed a motion for summary judgment. Rule 23(e) provides that claims of a certified class – or class proposed to be certified for purposes of settlement – may be voluntarily dismissed with the court’s approval. Although a class has not been certified and one

is not being proposed to be certified for purposes of settlement, plaintiff, in the interest of full disclosure and for avoidance of any doubt, submits this voluntary dismissal to the Court for its approval.

Respectfully submitted,

/s/ William K. Flynn

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been filed electronically with the U.S. District Court this 25<sup>th</sup> day of August, 2020. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. If a party is not given notice electronically through the Court's system a copy will be served by ordinary United States mail, first class postage prepaid, this 25<sup>th</sup> day of August, 2020.

/s/William K. Flynn

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